

Justin E. Sterling, State Bar No. 249491
LAW OFFICES OF JUSTIN STERLING
Justin@SterlingDefense.com
15760 Ventura Blvd. Suite 700
Encino, CA 91436
Tel. (818) 995-9452/Fax. (818) 824-3533

Erin Darling, State Bar No. 259724
LAW OFFICES OF ERIN DARLING
Erin@ErinDarlingLaw.com
3435 Wilshire Blvd. Suite 2910
Los Angeles, CA 90010
Tel. (323) 736-2230
Attorneys for Plaintiff Dora Solares

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DORA SOLARES, an individual,
Plaintiff,

v.

RALPH DIAZ, in his individual capacity,
KENNETH CLARK, in his individual
capacity, JOSEPH BURNS, in his
individual, and DOES 1 TO 15, in their
individual capacities

Defendants.

Case No. 1:20-cv-00323-LHR-BAM

**[PROPOSED] ORDER RE:
PLAINTIFF DORA SOLARES'S
SUBPOENAS TO OIG AND CDCR**

ORDER

The plaintiff, Dora Solares, served a subpoena on California Department of Corrections and Rehabilitation (referred to as “CDCR Subpoena”) on March 20, 2025. Plaintiff Solares served a subpoena on the Office of the Inspector General (referred to as “OIG Subpoena”) on May 5, 2025. On April 3, 2025, Respondent CDCR served objections to the CDCR Subpoena on Plaintiff’s counsel, specifically asserting that the documents sought by Plaintiff are protected by the psychotherapist-patient privilege. (*See* Docket Entry No. 153 at 1) On April 8, 2025, CDCR served on Plaintiff’s counsel a privilege log identifying 114 withheld documents, and also produced three documents as to which CDCR did not assert psychotherapist-patient privilege. (*Id.*) On April 24,

1 2025, the Court held a pre-motion conference and heard arguments on discovery issues
2 related to the production of certain statements by third-party Jaime Osuna regarding
3 homicidal ideations that may, or may not have, been made in the context of obtaining
4 mental health treatment. (Docket Entry No. 150) The court ordered CDCR to produce
5 an updated privilege log by May 14, 2025. (*See* Docket Entry No. 153 at 2) On April 29,
6 2025, the Court held a Status Conference and heard an update on the status of discovery
7 issues related to the production of certain statements by third-party Jaime Osuna
8 regarding homicidal ideations that may, or may not have, been made in the context of
9 obtaining mental health treatment. (Docket Entry No. 151).

10 On May 13, 2025, CDCR sought an extension to provide an updated privilege
11 log to the Court on or before June 13, 2025. (*See* Docket Entry No. 153) On May 15,
12 2025, the Court held a Pre-Deposition Conference on the status of discovery issues
13 related to the production of certain statements by third-party Jaime Osuna regarding
14 homicidal ideations that may, or may not have, been made in the context of obtaining
15 mental health treatment. (Docket Entry No. 156) The Court ordered that CDCR
16 produce an updated privilege log by June 6, 2026, along with the documents over which
17 the privilege is being asserted, so the Court could conduct an *in-camera* review; the Court
18 set a hearing on June 13, 2025. (*Id.*)

19 On May 28, 2025, the Court held a Pre-Motion Conference and heard argument
20 as to the OIG Subpoena and the CDCR Subpoena. (Docket Entry No. 162) The Court
21 reset the conference scheduled for June 13, 2025, to June 17, 2025, and ordered that
22 CDCR and OIG submit privilege logs setting forth objections to each of Solares's
23 document requests by June 6, 2025, with the plaintiff's response to both privilege logs
24 due June 13, 2025. (*Id.*)

25 On June 6, 2025, the Court reset the Pre-Motion Conference to June 24, 2025.
26 (Docket Entry No. 164) That same date, CDCR submitted a Declaration of D. Buduru
27 and a Privilege Log Re: Plaintiff's Subpoena to CDCR. (Docket Entry No. 166), as well
28 as a Notice and Privilege Log Re: Plaintiff's Subpoena to the OIG (Docket Entry No.

1 167). Plaintiff filed her response to the Privilege Log Re: Plaintiff's Subpoena to CDCR
2 (Docket Entry No. 169) and her response to Privilege Log Re: Plaintiff's Subpoena to
3 the OIG (Docket Entry No. 171). On June 23, 2025, CDCR filed a Supplemental
4 Privilege Log (Docket Entry No. 172) (referred to as "CDCR Supplemental Privilege
5 Log") and Defendant Luis Silva filed a Privilege Log Re: Plaintiff's Subpoena Directed
6 to the OIG (Docket Entry No. 173) (referred to as "Silva Privilege Log").

7 On June 24, 2025, the Court, after reviewing *in camera* the documents identified
8 in all filed privilege logs and submitted by CDCR, held a Pre-Motion Conference with
9 counsel for Plaintiff Solares, Defendants, CDCR and OIG all present. CDCR argued
10 that Jaime Osuna's mental health records are presumptively confidential and that
11 Osuna's counsel could have raised a doubt about his competency without Osuna
12 waiving his privacy rights to his mental health records.

13 The Court finds that the presumption of confidential records is overcome. The
14 documents responsive to the CDCR Subpoena are clearly relevant to the issues in this
15 case and cannot be obtained elsewhere. The privileges claimed by CDCR (third party
16 medical privacy, mental health privilege, Fed. R. Evid. 501, psychotherapist-patient
17 privilege (*Jaffee v. Redmond*, 518 U.S. 1, 10-11, 15-16 (1996))) have been waived. Jaime
18 Osuna put his mental state at issue in the state court competency proceedings.
19 Additionally, CDCR was allowed to take a position and has already provided Osuna's
20 mental health records (subject to protections) to non-CDCR employees. It is a step too
21 far to say that California statutory protections form a blanket and permanent basis for
22 keeping records unavailable to plaintiff, the Court and the finder of fact. The Court is
23 ordering production of records about Osuna's own statements regarding his violent
24 ideations, made to CDCR professionals, on or before the time that his housing was
25 reclassified in 2019. The focus is not on exposing details for the first time but on what
26 officials knew about the threat Osuna posed. CDCR is ordered to produce to counsel
27 for Solares the documents responsive to the CDCR Subpoena that have been provided
28 to the Court for its *in camera* review without redaction, within 48 hours of this order.

1 The produced documents are to be marked “CONFIDENTIAL-
2 ATTORNEYS’ EYES ONLY,” in accordance with the protective order. (Docket Entry
3 No. 76). The produced mental health records are subject to the following stringent
4 protections:

5 Unless otherwise ordered by the court or permitted in writing by the Designating
6 Party, Counsel for the Receiving Party may not disclose any information or item
7 designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to Plaintiff
8 Solares, members of Plaintiff’s family, friends or associates of Plaintiff, or to any
9 inmate, parolee, or person previously in the custody of CDCR or any of their
10 relatives, friends, associates, or the public. Counsel for the Receiving Party also
11 may not disclose any information or item designated “CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY” to Defendant Burnes or any other CDCR
13 employee unless that person otherwise qualifies to receive it under this section.
14 Unless otherwise ordered by the Court or permitted in writing by the
15 Designating Party, only Counsel for the Receiving Party may have access to and
16 review any information or item designated ‘CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY.’

18 As to the OIG Subpoena: the OIG shall produce documents that it produced
19 and has in its possession, without redaction, by Friday, June 27, 2025. The Court finds
20 that these records are relevant, not available by other means, and the need outweighs
21 any reason why such documents should not be produced.

22 ///

1 As to the documents identified by the CDCR responsive to the OIG subpoena
2 (Docket Entry No. 167-1), and the documents identified by Defendant Silva in his
3 privilege log (Docket Entry No. 173), counsel may submit briefing as follows: counsel
4 for defendants Burnes, Loza, Gamboa, Pena, Garcia, Gallemore, and Maytubby shall
5 submit briefing on any claims of privilege by Friday, June 27, 2025, and Plaintiff is to
6 submit her response by July 3, 2025. Defendant Silva shall submit briefing on any
7 privilege claim by July 3, 2025, and Plaintiff is to submit her response by July 10, 2025.

8
9
10 SIGNED on June ____, 2025, at Houston Texas.

11
12
13 _____
14 United States District Judge
HON. LEE H. ROSENTHAL

15 Presented By:

16 /s/ Erin Darling
17 ERIN DARLING
18 Attorney for Plaintiff
19
20
21
22
23
24
25
26
27
28